

Appl. No. 10/661684
Amdt. Dated September 16, 2008
Reply to Office action of June 16, 2008

REMARKS/ARGUMENTS

A Request for Continued Examination has been included with this response.

Accordingly, Applicants request the withdrawal of the finality of the last Office Action and request further consideration of the attached amended and new claims on the merits.

New claims 28 - 36 have been added in order to alternately define the invention as disclosed in the specification.

Without conceding the propriety of the Examiner's position, and solely to expedite prosecution, claims 7, 15, and 23 have been cancelled without prejudice or disclaimer.

The Examiner has rejected claims 8, 16 and 24 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended these claims in order to obviate the Examiner's rejection. In light of the forgoing, Applicants respectfully submit that the Examiner's rejection should be withdrawn, and claims 8, 16, and 24 allowed to issue.

The following quotation has been rejected under 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The Examiner has rejected claims 1, 2, 4, 5, 8 - 10, 12, 13, 16 - 18, 20, 21 and 24 - 25 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,167,597 to Malin.

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Applicants note that the Court of Appeals for the Federal Circuit has held that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants submit that the Malin reference fails to anticipate each and every element of the currently amended claims.

Specifically, Applicants note that the currently amended claims require that the front zipper profile have a substantially flat facing side surface and a finger extending from the base portion and a back zipper profile having a substantially flat facing side surface and a channel formed within the profile and extending from the facing side surface towards the attaching side surface. Furthermore, the current claims require that the finger is positioned in the channel and the substantially flat facing side surface of the front zipper profile abuts the substantially flat facing side surface of the back zipper profile, and wherein the facing side of at least one of the front and back zipper profiles is wider than its attaching side.

In contrast to the forgoing, the flat facing side surfaces as defined in the claims and as set forth in Malin do not abut one another. Applicant has clearly defined the base portion to be a substantially flat surface from which a finger 70 extends. Accordingly, the rectangular high compression members 48 set forth in Malin can not be read on this structure. Furthermore, as set forth in Fig.'s 2A - 2G, there are substantial air gaps between the attaching surface of the front zipper profile and the attaching surface of the second zipper profile. For at least this reason, Applicants submit that the Examiner's

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rejection should be withdrawn, and claims 1, 2, 4, 5, 8 - 10, 12, 13, 16 - 18, 20, 21 and 24 - 25 allowed to issue.

Furthermore, Malin fails to disclose wherein the facing side of at least one of the front and back zipper profiles is wider than its attaching side. In the last Office Action, the Examiner cited to the inverted triangles 72 of Fig. 2F of Malin as reading on the claimed structure. However, Applicants note that the amended claims define the lateral edges of the flanges to taper outwardly from the edges of the base to the facing side surface, and as clearly set forth in Fig. 2F of Malin, the base portion 76 is formed to exactly the same width as the top of the inverted triangle 72. There is absolutely no disclosure, teaching, or suggesting to both replace the compression members 48 of Fig. 2B with the compression members 72 of Fig. 2F, and also move the compression members of Fig. 2F outwards so as to create an outer diameter at the top of the inverted triangle greater than an outer diameter of the base profile 76. For at least this reason also, Applicants submit that the Examiner's rejection should be withdrawn, and claims 1, 2, 4, 5, 8 - 10, 12, 13, 16 - 18, 20, 21 and 24 - 25 allowed to issue.

In regard to the Examiner's assertion of "official notice" in rejecting claims 8, 16, and 24, Applicants respectfully submit that the shape of the finger and the channel is critical as it provides for the substantial elimination of air gaps, in contrast to those elements set forth in Fig.'s 2A - 2G of Malin. In light of the forgoing, Applicants respectfully request that the Examiner assert evidence that the claim elements would have been obvious to one of ordinary skill in the art, or that the Examiner withdraw the rejection and allow claims 8, 16, and 24 to issue.

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Applicants note that the Examiner has failed to set forth any substantive rejections of claims 5, 13, and 21. Applicants respectfully direct the Examiner's attention to MPEP §707.07(g), which addresses piecemeal examination. "Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references. (See MPEP § 904.03.) Major technical rejections on grounds such as lack of proper disclosure, lack of enablement, serious indefiniteness and *res judicata* should be applied where appropriate even though there may be a seemingly sufficient rejection on the basis of prior art. Where a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression." MPEP §707.07(g), rev. 6 (October 2007). Applicants respectfully request that, absent the assertion of a substantive rejection, claims 5, 13, and 21 be allowed to issue.

Regarding claims 26 and 27 under 35 U.S.C. §103 over Malin in view of Custer (USPN 5,215,380), Applicants submit that, at least for the reasons noted above, the Examiner's rejection should be withdrawn and these claims allowed to issue. Applicants submit that the Custer reference does not compensate for the failed teachings of Malin. Additionally, Applicants submit that the Examiner's statement of admission by silence during prosecution (see page 4 of the Office Action) is incorrect and improper under the current state of the law. In contrast, Applicants submit that the Examiner has failed to cite any art that discloses an arrow-shaped side cross-section and the advantages Applicant's have disclosed inherent in such a structure. Accordingly, it could not have

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been obvious to one of ordinary skill in the art to provide a guide that would interface with such a structure.

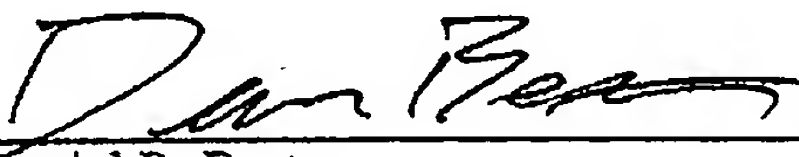
The Examiner's remaining references cited but not relied upon, considered either alone or in combination, also fail to teach applicant's currently claimed invention. In light of the foregoing, Applicants respectfully submit that all claims now stand in condition for allowance.

In the event that it is deemed necessary, the Commissioner is hereby authorized to charge any fees due or to credit any overpayment to Deposit Account No. 50-3891.

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Respectfully submitted,

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 (Reg. 58,439)

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